IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

EFA.No. 14 of 1998()

OS.80/1980 of PRINCIPAL SUB COURT,KOLLAM

.....

APPELLANT: FIRST RESPONDENT/PLAINTIFF:

K.RADHAKRISHNAN, SARASWATHY BHAVAN,
SASTHRI JUNCTION, KADAPPAKADA, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)
SRI.GEORGE CHERIAN

RESPONDENTS: PETITIONER & RESPONDENT NO.2/DEFENDANTS:

---

1. MANAGING DIRECTOR,
THE NEW INDIA ASSURANCE COMPANY LTD.
HEAD QUARTERS, M.G.ROAD, MOMBAY.

2. CENTRAL BANK OF INDIA,
CHINNAKKADA, KOLLAM.

BY ADV. SRI.MPR.NAIR
SRI.DEVAN RAMACHANDRAN

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

E.F.A.No. 14 of 1998

Dated this the 5th June, 2007.

J U D G M E N T

The plaintiff in O.S.No.80 of 1980, on the file of the Principal Sub Court, Kollam, is the appellant herein. Appellant filed the said suit for damages against the Insurer and the Bank, alleging that a boat owned by appellant sank in the sea, causing damages to him. Trial court decreed the suit. Challenging the decree, first respondent filed an appeal before this Court as A.S.No.317/1984. A stay petition was also filed. This Court passed a conditional order of stay. The first respondent who was the appellant in that appeal was directed to deposit one half of the decree amount as a condition precedent for stay, and further ordered that the said amount can be withdrawn by appellant unconditionally. It is submitted that the above amount was deposited, and appellant withdrew that amount. Subsequently, this Court reversed the decree passed by the trial court, and dismissed the suit. Even though the appellant filed Special Leave Petition before the Supreme Court, that was also dismissed. Thereafter, the first respondent filed a petition under Section 144 of the Civil Procedure

Code for restitution. Appellant contented that application for restitution is E.P., and hence, he is the judgment debtor. He further contented that he has got no means. The court below took a view that the appellant is not a judgment debtor. He is a person who appropriated the amount with the help of an order passed by this Court, and as such, he is bound to repay the amount. Challenging that order, this appeal is filed.

2. The learned counsel appearing for the appellant has tenuously argued before me that the court below had committed grave procedure irregularity by not considering the question of 'no means' pleaded by the appellant. It is also contented that in **Mahijibhai v. Manibhai** *(AIR 1965 Sessions Court, 1477)*, a Constitution Bench of the Supreme Court has held that an application for Restitution is an application for execution of the decree. He further contented that appellant is a judgment debtor and he has got every right to plead 'no means'. It is argued that in view of the no means plea raised, decree holder is bound to lead evidence first. It is further submitted that the first respondent has not adduced any such evidence.

3. I find it very difficult to agree with the contentions raised by the appellant. The Principle of Doctrine of Restitution is that on the reversal of a judgment or order, the law raises an obligation on the party to the record, who received the benefit of the erroneous judgment or order, to make restitution to the other party for what he had lost, and it is the duty of the court to enforce that obligation, unless it shows that the restitution would be clearly contrary to the interest of justice. The word "restitution" means restoring the party on variation or reversal of a decree to its original position. So, by an order of Restitution, the parties are relegated to the original position.

4. In this case, the appellant had received one half of the amount which was deposited in pursuance of an order passed by this Court. So, he is bound to give back that amount to the first respondent. The appellant cannot be allowed to plead 'no means'. So, there is no merit in this appeal, and the same is only to be dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

E.F.A. No. 14 of 1998

J U D G M E N T

Dated: 5th June, 2007.